LAW ENFORCEMENT DIGEST – January 2021

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Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- Washington Courts of Appeal
- Washington State Supreme Court
- Federal Ninth Circuit Court of Appeals
- United States Supreme Court

Cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

The materials contained in this course are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

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CASES

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WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- Caselaw Update authored by WA Association of Prosecuting Attorneys' Senior Staff Attorney, Pam Loginsky

QUESTIONS?

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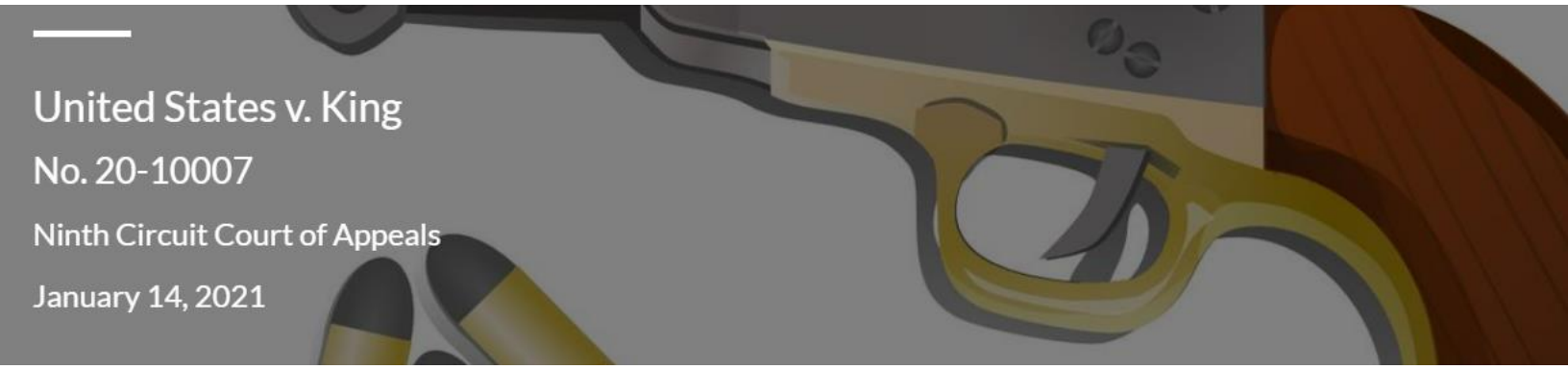


United States v. King

No. 20-10007

Ninth Circuit Court of Appeals

January 14, 2021

Facts Summary

TOPIC: Search Warrant Not Overbroad

California police were investigating a domestic-violence incident involving individuals uncharged in this case. Allegedly a male suspect pointed an unloaded gun at a woman's head and pulled the trigger. He then started to open a box of ammunition while the victim fled outside. The suspect followed the victim and struck her across the face. The victim then contacted the police and described the suspect's firearm as a "large silver & gold revolver" with an unknown caliber.

During a jailhouse conversation between the suspect and victim, the suspect asked the woman to give "the thing" to "Dubs." Police suspected that "the thing" referred to the gun and asked the victim about it. She admitted she gave the firearm to "Dubs" and described his appearance and phone number, the location of his house, his live-in girlfriend, and his vehicles.

Using the victim's information, officers learned that "Dubs" was King. They also discovered that King was prohibited from possessing firearms based on two prior felonies. Police observed King's car parked at his residence—the place where the victim said she delivered the firearm.

On the basis of this information, a police officer signed an affidavit stating that there was probable cause to believe King was in violation of a section of the California Penal Code prohibiting a "felon in possession" and requested permission to search his home for the "outstanding firearm and any evidence that would further the [officer's] investigation."

A judge then authorized the warrant, allowing the search of King's home for "[a]ny firearm" and various other firearm-related items. The search of King's home turned up four firearms, including a "silver & gold revolver" described by the victim. King was charged in federal court with being a felon in possession in violation of the federal code 18 U.S.C. § 922(g)(1).

King filed a Motion to Suppress the evidence found on the grounds that the police conducted an unconstitutional search under the Fourth Amendment. The federal district court denied the motion, ruling that the warrant was supported by probable cause and was sufficiently particular.

On appeal to the Ninth Circuit Court of Appeals, King challenged the validity of the search warrant. Specifically, he argued that the warrant was overbroad—that there was only probable cause for the silver and gold revolver, and no other firearms. The Ninth Circuit affirmed the district court's denial of the Motion to Suppress.

Training Takeaway

The Fourth Amendment provides that "**no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."** U.S. Const. amend. IV. This requires two fundamental principles. First, **a warrant must be supported by probable cause—meaning a "fair probability that contraband or evidence of a crime will be found in a particular place based on the totality of circumstances."** (citation omitted) Second, **a warrant must not be overbroad. Basically, the scope of a warrant must be limited by its probable cause and must never include more than is covered by that probable cause.**

Applying those two principles, the Ninth Circuit concluded that the warrant did not violate the Fourth Amendment. The Court observed that in the affidavit, a police officer detailed his investigation, his training and experience, and his suspicion that King was a felon in possession. The affidavit noted that King had two prior felonies and that King took possession of the "large silver & gold revolver" of unknown caliber shortly after it was used in a violent domestic dispute. The officer also explained how he suspected that other weapons might be present at King's residence. Additionally, the officer explained that, as a felon, any firearm found in King's possession would constitute evidence of a felon-in-possession offense. The officer expressed his belief that King was in violation of the felon-in-possession statute.

The Court said that in taking all these facts together provided the judge with a substantial basis to authorize the broader search for "any firearm." It added that the affidavit demonstrated that King took the revolver to hide it from law enforcement for the domestic abuse suspect. By concealing the "silver & gold" firearm, it raised the fair inference that King possessed other firearms. Plus, King's criminal history meant that "any firearm" in his possession was contraband and evidence of a crime. Considering all those facts, the Court saw no violation of the Fourth Amendment.

EXTERNAL LINK: https://cdn.ca9.uscourts.gov/

United States v. Mora-Alcaraz
No. 19-10323

Ninth Circuit Court of Appeals

January 21, 2021

Facts Summary

TOPIC: Custodial Interrogation – the "Kim Factors"

In November 2016, Reno police received a report of a domestic dispute at the home of Mora-Alcaraz's estranged wife and their seven-year-old son. When contacted, the wife reported that Mora-Alcaraz had come to her home to accost her new boyfriend. She stated that, during the argument, and in front of the boy, Mora-Alcaraz brandished a semi-automatic gun. According to her, the argument eventually settled down, and Mora-Alcaraz spent the night sleeping on the couch in her home. The next morning, Mora-Alcaraz set off on a trip with the boy to a mall.

Officer Jackins, who had received the report of the domestic disturbance, called Mora-Alcaraz at the mall, asking to speak with him about the events of the previous evening and early morning and do a welfare check on the child. Mora-Alcaraz agreed to meet at the mall.

Officer Jackins arrived with three other armed, uniformed officers in two police cars. After Mora-Alcaraz and his son met the officers outside the store, Officer Jackins asked to speak to Mora-Alcaraz away from the boy. Mora-Alcaraz agreed. Two officers then escorted the boy to the entrance of the store; they eventually took him inside because the boy was cold.

In the meantime, Officer Jackins took what he described as a "kill them with kindness" approach to the interrogation. Mora-Alcaraz cooperated and eventually admitted to being in the United States illegally and having a gun in his truck. He agreed to let Officer Jackins see the gun. Officer Jackins then entered the truck, seized the firearm, and arrested Mora-Alcaraz for being an alien in possession of a firearm.

After his indictment, Mora-Alcaraz moved to suppress both his statements and the firearm. The district court ruled from the bench that Mora-Alcaraz had been subjected to a custodial interrogation, because he was not free to leave, and that he should have been given Miranda warnings. The district court focused on his having been separated from the boy, which the court concluded made physical restraint unnecessary. The court also noted the threatening nature of the "police

dominated atmosphere"—there were several armed officers in marked cars, and lights flashing or otherwise displayed. The court ordered the statements suppressed. It also ordered the gun suppressed as well, on the basis that the lack of Miranda warnings may have led to Mora-Alcaraz's consent to the search. The government appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit upheld the lower court's decision.

Training Takeaway

The district court ordered Mora-Alcaraz's incriminating statements concerning his citizenship status and his ownership of the gun suppressed because they were **the product of a custodial interrogation that required Miranda warnings**. The parties agreed that the key issue was whether the district court erred in holding that persons in Mora-Alcaraz's position would have **felt, under a totality of the circumstances, that they were "not at liberty to terminate the interrogation and leave."** (citation omitted). The case differs from most Miranda cases, however, in that the police interrogation took place in a public shopping mall. Most such disputed interrogations seem to take place in a police station or in the defendant's home.

In determining whether Mora-Alcaraz was free to leave, the Ninth Circuit considered the factors it identified in the previous case of United States v. Kim, 292 F.3d 969 (9th Cir. 2002). Referred to as the **"Kim Factors," these include (but are not exclusive):**

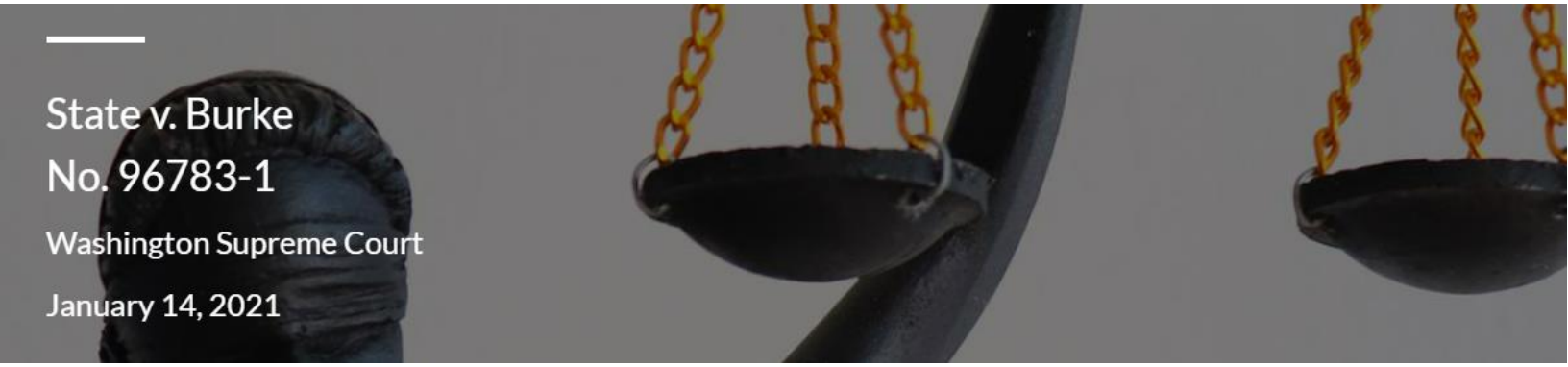
1. the language used to summon the individual;
2. the extent to which the defendant is confronted with evidence of guilt;
3. the physical surroundings of the interrogation (a 'police-dominated atmosphere');
4. the duration of the detention; and
5. the degree of pressure applied to detain the individual.

The facts that the Ninth Circuit found most relevant included the following:

> the police took physical custody of Mora-Alcaraz's seven-year-old son and eventually led him inside a large store and out of Mora-Alcaraz's sight. Despite the lack of physical restraints, Mora-Alcaraz was subjected to severe pressure as a result of the police separating him from his son. Although the government argues the situation was relatively benign, because there was no threat of harm to the child, the police were well aware that a father would not walk away from a public place and leave his young son with strangers. No physical restraint of Mora-Alcaraz was necessary so long as the police kept him separated from his son. He could not leave.

The Ninth Circuit held that the totality of circumstances, including the **Kim factors**, supported the district court's conclusion that a reasonable person in Mora-Alcaraz's position would not have felt free to end the questioning and leave the mall. So, it ruled that the district court properly ordered the statements suppressed because they were the product of a custodial interrogation in which Mora-Alcaraz was not advised of his rights pursuant to Miranda.

EXTERNAL LINK: https://cdn.ca9.uscourts.gov/



State v. Burke

No. 96783-1

Washington Supreme Court

January 14, 2021

Facts Summary

TOPIC: Sixth Amendment Right to Confront a Witness

Around 1:30 a.m. on July 3, 2009, K.E.H. arrived in the emergency department at Tacoma General Hospital. She reported that she had just been raped in nearby Wright Park, where she resided. She was crying and had leaves and grass in her hair. Shortly after she arrived, a social worker called the police to report the rape. Around 3:15 a.m., Officer Phan arrived at the Tacoma General emergency department and interviewed K.E.H. about the incident. K.E.H. gave a description of the assailant and the location of the assault.

After interviewing her, Officer Phan went to the park to look for evidence and possible witnesses or suspects but found no one. K.E.H. was treated in the emergency department. Sexual assault nurse examiner Kay Frey conducted K.E.H.'s sexual assault exam that afternoon. After obtaining verbal and signed Consent, Nurse Frey asked K.E.H. specific questions about what she remembered from the assault, according to the patient history protocol. In the patient history forms, she recorded quoted language from K.E.H. describing the location of the assault ("close to 6th Avenue [at] a table") and the assailant's appearance ("He was tall, a light black, no hair or short hair. He had a white T-shirt and jeans. No jacket."). Nurse Frey collected fluids during the sexual assault exam from K.E.H.'s underwear.

In 2011, police matched the DNA collected during the exam to Ronald Burke. Burke lived in an apartment near Wright Park in Tacoma in 2009 and admitted to having been to the park. However, he denied ever having sex there or getting in a fight with a woman there.

In 2014, Burke was charged with second degree rape by forcible compulsion. K.E.H. died in 2011.

Burke was tried by a jury in 2016. The State sought to admit statements K.E.H. made to Nurse Frey during the sexual assault examination as statements made for purposes of medical diagnosis or treatment. Burke objected to their admission, contending that the statements were testimonial, so their admission would violate his Sixth Amendment right to confrontation. Because K.E.H. was deceased, Burke could not confront her at trial.

The trial court admitted K.E.H.'s statements. Burke appealed. The Court of Appeals held that all of K.E.H.'s statements to Nurse Frey were testimonial, their admission violated the confrontation clause, and the error was not harmless. The State sought review. The Washington Supreme Court reversed the Court of Appeals' decision and ruled the statements admissible.

Training Takeaway

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. **The "confrontation clause" prohibits the admission of testimonial statements unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination. Only statements that are testimonial implicate the confrontation clause.** Courts must determine the primary purpose of an interrogation "by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs."

Statements are testimonial when they are made to establish past facts in order to investigate or prosecute a crime. On the other hand, statements are nontestimonial when they have another primary purpose. The role of the person the declarant is speaking to is significant to determining the primary purpose of a statement. **Statements made to witnesses other than law enforcement officers are far more likely to be made for reasons not primarily associated with criminal prosecution. Statements are nontestimonial, for example, when their primary purpose is to guide the provision of medical care.**

The Washington Supreme Court had to determine whether Nurse Frey's role as a sexual assault nurse examiner was principally as a medical provider or as someone charged with uncovering and prosecuting criminal behavior when she elicited these statements from K.E.H. The Court recognized that the role of a sexual assault nurse examiner shares features with both medical providers and law enforcement because the nurse's duties are to provide medical care and to collect evidence. However, the Court stated that it did not believe that sexual assault nurse examiners are "principally charged with uncovering and prosecuting criminal behavior."

The Court said:

> Together, K.E.H.'s and Nurse Frey's statements and actions in the context of a sexual assault exam indicate that the primary purpose of nearly all of K.E.H.'s statements was not to provide an out-of-court substitute for trial testimony but to guide medical treatment for sexual assault. . . .**The statements were made in a hospital exam room, not a police station. No member of law**

enforcement was present during the exam, and Nurse Frey did not take any direction from law enforcement. Additionally, Nurse Frey provided medical care specific to sexual assault. Finally, these statements were elicited for both medical and forensic purposes, if not exclusively medical purposes. Thus, the statements were nontestimonial and their admission did not violate the confrontation clause.

EXTERNAL LINK: https://www.courts.wa.gov

Mancini v. City of Tacoma
No. 97583-3
Washington Supreme Court
January 28, 2021

Facts Summary

TOPIC: Duty of Care in Execution of Search Warrant

In early 2011, a confidential informant (CI) advised Tacoma Police Officer Smith that she had seen a dealer-sized quantity of drugs at Logstrom's apartment in Federal Way. The CI identified one of four identical buildings and said she had seen those drugs in apartment B1. The CI also told Officer Smith that Logstrom rented his apartment in his mother's name.

Smith conducted an online search using a website that provides personal information for a fee. From that information, Smith learned that Mancini resided at apartment B1 and that Logstrom was not associated with that apartment. Smith did not recall learning that Mancini had rented apartment B1 since 2006, that Mancini paid the utilities for apartment B1, that a Group Health landline was associated with apartment B1 for Mancini's work, or any details of the web search beyond Mancini's age and race. Based on Mancini's age and race, Smith believed Mancini could be Logstrom's mother, but he took no further action to investigate further.

Smith testified that he ordinarily performed surveillance and conducted a controlled buy in a target apartment in 95 percent of similar investigations. But he took neither step in this case. He provided numerous reasons for skipping these steps, including the limited relationship between the CI and Logstrom, Smith's hesitance about interacting with the King County Prosecutor's Office, and limited officer availability due to the holidays and hunting season.

Instead, Smith applied for a search warrant for apartment B1 with only the information he already possessed. He attributed all the information about Logstrom to the CI's observations of Logstrom selling methamphetamine from both his apartment and his vehicle. A judge issued a search warrant for Logstrom's person and vehicle, and for apartment B1.

At about 9:45 a.m. on January 5, 2011, eight police officers arrived in a van to execute the warrant at apartment B1. Police rated Logstrom a "medium threat" because he had been seen with a handgun in the past. An officer knocked on the

door and announced their presence. They received no response for 20 to 30 seconds. The police then broke open the door with a battering ram. They entered the apartment with guns drawn.

Mancini, the occupant of B1, was awakened and came out of her bedroom in a nightgown to see guns pointed at her. They screamed at her to get down and asked, "Where's Matt?" and "Are you Kathleen?" One officer pushed Mancini onto the floor and cuffed her hands behind her back. Police then dragged her outside of the apartment and denied her request to put on shoes.

Outside, an officer questioned Mancini about Logstrom. The officer took Mancini, still in a nightgown, handcuffed and barefoot, up two flights of stairs toward the parking lot and asked her about a vehicle that belonged to Logstrom. She told the officer it was associated with the neighboring building.

Eventually, the police uncuffed Mancini and told her they had the wrong apartment. Mancini estimated she was cuffed for about 15 minutes. Officer Smith testified that he knew immediately after entering that they had the wrong apartment. Smith did not enter the apartment until police had already taken Mancini into custody. Eventually, the police left Mancini's apartment B1. They then approached Logstrom's apartment A1.

The police report omitted the time they left Mancini and the time they first contacted Logstrom. But the police had no warrant for apartment A1, so they knocked on Logstrom's door, and he came out. Logstrom then consented to a search, and the officers found marijuana plants growing in his apartment. Unlike at Mancini's apartment, they did not use weapons or a battering ram.

Mancini sued the police for negligence in the performance of their duties. The City moved for a directed verdict in its favor pursuant to Civil Rule 50. The trial court denied the Rule 50 Motion. The jury found that the police breached the duty of care that they owed to Mancini. After the jury verdict, the City appealed the denial of its Rule 50 Motion, and the Court of Appeals granted the appeal and reversed the jury verdict. Mancini requested that the Supreme Court of Washington review. The Supreme Court granted review, reversed the Court of Appeals decision, and reinstated the jury's verdict.

Training Takeaway

To prevail on a civil negligence claim, a plaintiff must show (1) the existence of a duty to the plaintiff, (2) a breach of that duty, (3) a resulting injury, and (4) the breach as the proximate cause of the injury. At issue in this case was the first element: **whether police owe a duty of reasonable care in the exercise of their official duties.**

The Court observed that every individual owes a duty of reasonable care to refrain from causing foreseeable harm in interactions with others. It added that this duty applies in the context of law enforcement and encompasses the duty to refrain from directly causing harm to another.

Claims of negligent law enforcement are not novel. Washington courts have long recognized the potential for civil liability based on the tort of negligent performance of law enforcement activities. However, until this case, Washington courts had not specifically addressed civil tort liability for negligence in the execution of a search warrant. The Court held that police executing a search warrant owe the same duty of reasonable care that they owe when discharging other duties.

Having determined that **police owed Mancini a duty of reasonable care**, the court then reviewed whether the police breached that duty. It further held that substantial evidence existed from which a reasonable jury could conclude that Tacoma police breached that duty in entering, searching, and detaining Mancini at her apartment. The court rejected the City's argument that sovereign immunity and the public duty doctrine barred Mancini's claims. The Court responded that **the Washington State Legislature has enacted a broad waiver of sovereign immunity**. The Court said its decision was consistent with that waiver and reemphasized **that the standard tort duty of reasonable care applies with full force to police executing a search warrant**.

EXTERNAL LINK: http://www.courts.wa.gov/

State v. Birge

COA No. 53584-0-II

Washington Court of Appeals

January 5, 2021

Facts Summary

TOPIC: Accomplice Liability of Police Officer and Official Misconduct of Police Officer

RC left KJC, her nine-year-old grandchild who had severe psychiatric issues and cognitive disabilities, with two social workers while she ran a brief errand. KJC then locked the social workers out of the house, broke windows, and grabbed kitchen knives. One of the social workers called 911 out of concern for KJC's safety. Before law enforcement arrived, RC returned. She disarmed and calmed KJC.

According to KJC and the social workers, two police officers, Birge and Jahner, then arrived and encouraged RC to discipline KJC by striking him with a belt. RC initially resisted but eventually struck KJC more than 20 times with a belt while one of the officers allegedly held the child down. KJC was then transported to the hospital due to cuts on his hand and for psychiatric treatment. The next day, medical staff discovered bruises on KJC's back, sides, and arms, and they notified police.

After the Tacoma Police Department and the Washington State Patrol (WSP) investigated, the State charged Birge and Jahner with third degree assault of a child both as principals and as accomplices. The State also charged them with official misconduct.

Birge and Jahner moved to dismiss the charges. The trial court granted their motions and dismissed both charges. The State appealed, arguing that the evidence was sufficient to proceed to a jury trial on third degree assault and official misconduct.

The Washington Court of Appeals, viewing the evidence in the light most favorable to the State, held the State has presented sufficient evidence to establish a case of guilt of both third-degree assault and official misconduct, even if some facts were in dispute. The Court also held that the official misconduct statute was not unconstitutionally vague or overbroad. The Court reversed the trial court's dismissal of both charges and remanded back to the trial court for further proceedings.

Training Takeaway

Under Washington statutory law (RCW 9A.36.140(1)), **a person can be convicted of third-degree assault of a child if the person commits assault against a child.** According to statute, a person is guilty of an assault if "[w]ith criminal negligence cause bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm." Criminal negligence occurs when a person "fails to be aware of a substantial risk that a wrongful act may occur," and that failure "constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation."

However, Washington statutes provide that "**physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child.**" RCW 9A.16.100 includes a non-exhaustive list of actions that are presumed unreasonable, including any **"act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks."**

An accomplice is a person who "solicits, commands, encourages, or requests [another] person to commit [the crime]" or who "[a]ids or agrees to aid [another] person in planning or committing" the crime, while knowing "that [their conduct] will promote or facilitate the commission of the crime." RCW 9A.08.020(3)(a). Washington law provides that, "an accomplice must associate himself with the principal's criminal undertaking, participate in it as something he desires to bring about, and seek by his action to make it succeed."

Accomplice liability does not require the State to prove that the principal and accomplice share the same mental state. According to the witnesses, both Birge and Jahner encouraged the assault by telling RC to beat KJC for every window he broke and failing to instruct RC, who had never hit a child before, on how much force to use. Viewing the evidence in the light most favorable to the State, the Court held that Birge encouraged RC to inflict bodily harm on KJC and exceed reasonable and moderate discipline under the circumstances by telling RC to "'beat the demons out of [KJC].'" And a rational trier of fact could find that Jahner aided the assault by holding KJC down and exposing his buttocks for the duration of the beating.

Under RCW 9A.80.010(1), **a police officer may be convicted of official misconduct if the State proves that "with intent to obtain a benefit or to deprive another person of a lawful right or privilege: (a) [the officer] intentionally commits an unauthorized act under color of law; or (b) . . . intentionally refrains from performing a duty imposed upon [them] by law."**

Viewing the evidence in the light most favorable to the State without weighing

conflicting statements or making credibility determinations, the Court ruled that the State's evidence, if true, was sufficient to establish a prima facie case of official misconduct against Birge and Jahner. The Court added that a rational fact finder could conclude they intended to deprive KJC of his right to be free from an assault. Birge and Jahner informed RC about the parental discipline statute which, they argue, establishes that they intended only to facilitate lawful physical discipline. However, Birge and Jahner's intent was a question of fact, and because that fact is in dispute, the trial court erred by granting the motion to dismiss.

NOTE: The Court did not rule that the Officers were guilty of assault or official misconduct, it just ruled that the trial court should not have dismissed the case before a trial. All facts were viewed in a light most favorable to the State, but the State would then have the burden of proving the charges at trial.

EXTERNAL LINK: http://www.courts.wa.gov/